

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DEMAR RHOME,

Plaintiff,

v.

GREGORY LINK,

Defendants.

CASE NO. C07-1065-RAJ-MJB

ORDER DISMISSING COMPLAINT AND
DENYING PLAINTIFFS PENDING
MOTIONS

Plaintiff has filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1983. He has been granted leave to proceed *in forma pauperis*; however, the Court has declined to order service of his complaint due to deficiencies therein and has granted him leave to amend. (Dkt. #19). The Court having reviewed Plaintiff's Third Amended Complaint and the balance of the record hereby finds and ORDERS:

Plaintiff's complaint (Dkt. # 21) is DISMISSED pursuant 28 U.S.C. § 1915(e)(2)(B)(ii) for failure state a claim upon which relief can be granted.


1. In the Order granting Leave to Amend, the Court indicated that Plaintiff's complaint is deficient in that he fails to show how the named defendant, who is a public defender, falls within the purview of a § 1983 action. Further, the Court identified that when public defenders are acting in their role as advocate, they are not acting under color of state law for § 1983 purposes." *See Georgia v. McCollum*, 505 U.S. 42, 53 (1992); *Miranda v. Clark County*; 279 F.2d 1102, 1107-08 (9th Cir. 2002).

1 Where public defenders are performing administrative or investigative functions, they may be
2 acting under color of state law. *See Polk County* 454 U.S.312, 324-25 (1981).

3 The plaintiff's Third Amended Complaint does not cure the apparent deficiency.

4 2. In light of the above, Plaintiff's motion for court to order child study and treatment
5 center to mail (Dkt.# 22), motion for transport to U.S. District Court (Dkt. # 23), motion for
6 transport to Western State Hospital (Dkt. # 24), motion for evidentiary hearing (Dkt. # 25), and
7 motion for post-conviction relief (Dkt. # 26) shall be stricken as moot.

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9 DATED this 8th day January of , 2008.

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13 The Honorable Richard A. Jones
14 United States District Judge

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16 Recommended for Entry
17 this 26th day of December, 2007.

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19 /s/Monica J. Benton

20 Monica J. Benton
21 United States Magistrate Judge